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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**

**ROBIN AVERY,**

Case No. Cv 08-139-HU

Plaintiff,

v.

**DANIEL N. GORDON;**  
**DANIEL N. GORDON, P.C.,**  
an Oregon Professional Corporation;  
**FIRST RESOLUTION INVESTMENT**  
**CORPORATION**, a foreign corporation

Defendants,

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**COMPLAINT**  
Unfair Debt Collection Practices;  
Violation of 15 USC §1692 (FDCPA)  
**DEMAND FOR JURY TRIAL**

**PRELIMINARY STATEMENT**

1. This is an action for money damages brought by a consumer pursuant to the Fair Debt Collection Practices Act (“*FDCPA*”), 15 U.S.C. §1692, *et seq*, which prohibits abusive, deceptive and unfair debt collection practices.

2. Plaintiff's claims arise from defendants' attempts to collect a debt in Oregon through means and instrumentalities of interstate commerce and the mails.

#### JURISDICTION

3. Jurisdiction for federal claims arises under 15 U.S.C. §1692k(d).
4. Venue is proper in this judicial district under 28 U.S.C. 1391(b).

#### PARTIES

5. Plaintiff is a natural person residing in Washington County, Oregon, and a consumer.
6. Defendant Daniel N. Gordon, P.C. is an Oregon domestic Professional Corporation and a debt collector as defined by 15 U.S.C. §1692 (*"Gordon P.C."*)
7. Defendant Daniel N. Gordon is an individual, a resident of Oregon, an active member of the Oregon State Bar, an employee of *Gordon P.C.* acting within the scope of his employment and a debt collector as defined by 15 U.S.C. §1692 (*"Gordon"*).
8. Upon information and belief, defendant First Resolution Investment Corporation is a Nevada Corporation and a debt collector as defined by 15 U.S.C. §1692 (*"First Resolution"*)

#### IV. FACTUAL ALLEGATIONS

9. Prior to November 5, 2001, plaintiff was obligated for a consumer debt on a credit card account (*"the account"*) maintained by Provident National Bank (*"Provident"*).
10. Pursuant to the terms of the credit-card account holder agreement (*"Card-Holder Agreement"*), the law of the State of New Hampshire and United States federal law

exclusively applied to all terms and disputes arising out of the *Card-Holder Agreement*.

11. The State of New Hampshire's statute of limitations applicable to any collection action arising out of the *Card-Holder Agreement* is three (3) years.
12. The last payment that plaintiff made on *the account* was credited to *the account* on November 5, 2001, which, after credit was given, left an outstanding balance on the account ("*the debt*").
13. *The debt* was sold, transferred or assigned by Providian.
14. *First Resolution* purports to have purchased the debt on or about July 24, 2004.
15. On or about November 5, 2004, the time to commence a legal action for *the debt* expired.
16. On or about December 19, 2006 plaintiff commenced a legal action in the District Court of Oregon, to wit: *Robin Avery v. First Resolution Management Corp., First Resolution Investment Corp., Derrick E. McGavic, Esq., and Kristin K. Finney, Esq.*, Dist. of Or. Case No. CV-06-1812-HA ("*the lawsuit*").
17. On or about January 31, 2007 *Gordon and Gordon, P.C.* filed a counterclaim in *the lawsuit* on behalf of *First Resolution* in an attempt to collect *the debt* from plaintiff ("*the Counter-Claim*").
18. As an inherent part, and in support, of *the Counter-Claim*, *Gordon, Gordon P.C.*, and *First Resolution* attached as Exhibit 1 a true copy of a cardholder agreement, dated 11/00, along with an amendment to said account agreement dated 5/01, together of

which they alleged to be the true *Card-Holder Agreement* and the contractual basis obligating plaintiff to *First Resolution* and upon which they sought to collect *the debt*.

19. The cardholder agreement attached to *the Counter-Claim* and attempted to be collected upon from plaintiff was not the cardholder agreement governing *the debt* and materially differed in several respects from the true *Card-Holder Agreement*.
20. As part of *the Counter-Claim*, *Gordon, Gordon P.C.*, and *First Resolution* alleged that “[p]laintiff is indebted on the credit card as of June 24, 2002 in the amount of \$3,807.28, plus interest thereon at the contract rate of 23.99% per annum from June 24, 2002 until paid.” Said amount included approximately \$786.63 in capitalized charges and interest which were not authorized by *the Card-Holder Agreement*.

**V. FIRST CLAIM FOR RELIEF - Attempted Collection of Unauthorized Charges**

21. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.
22. Within the year next preceding filing of this complaint and in connection with defendants attempting to collect *the debt*, defendants used false, deceptive and misleading representations and means in violation of 15 U.S.C. §1692e by misrepresenting the character, legal status, or amount of *the debt*.
23. Within the year next preceding filing of this complaint and in connection with defendants attempting to collect of *the debt*, defendants used unfair and unconscionable means in violation of 15 U.S.C. §1692f by attempting to collect interest, fees, and charges which were not authorized by *the Card-Holder Agreement* creating *the debt* nor permitted by law.

24. Pursuant to 15 U.S.C. §1692k(a)(2)(A), defendants are each liable to plaintiff for \$1,000.00 in statutory damages.

25. Pursuant to 15 U.S.C. §1692k(a)(3), plaintiff is entitled to her attorney fees and costs.

**VI. SECOND CLAIM FOR RELIEF - Invalid Cardholder Agreement**

26. Paragraphs 1 through 20 are re-alleged and incorporated herein by reference.

27. Within the year next preceding filing of the complaint and in connection with defendants attempting to collect *the debt* pursuant to an invalid cardholder agreement, defendants used false, deceptive and misleading representations and means in violation of 15 U.S.C. §1692e by misrepresenting the character, legal status, or amount of *the debt*.

28. Pursuant to 15 U.S.C. §1692k(a)(2)(A), defendants are each liable to plaintiff for \$1,000.00 in statutory damages.

29. Pursuant to 15 U.S.C. §1692k(a)(3), plaintiff is entitled to her attorney fees and costs.

**VII. THIRD CLAIM FOR RELIEF - Attempted Collection of Time-Barred Debt**

30. Paragraphs 1 - 20, and 22 - 25 are re-alleged and incorporated by reference.

31. As part of *the lawsuit*, the Court found that collection of *the debt* was not time-barred. That finding is currently on appeal in the 9<sup>th</sup> Circuit Court of Appeals. Plaintiff, faced with the imminent expiration of her own statute of limitations herein and said appeal still pending, brings this claim on a precautionary basis in order to preserve her claims in the event of a reversal.

*WHEREFORE*, plaintiff demands judgment in her favor and against defendants as follows:

Under her First Claim for Relief, \$1,000 from each defendant in statutory damages, along with her reasonable attorney fees and costs.

Under her Second Claim for Relief, \$1,000 from each defendant in statutory damages, along with her reasonable attorney fees and costs.

Under her Third Claim for Relief, \$1,000 from each defendant in statutory damages, along with her reasonable attorney fees and costs

Dated: January 30, 2008.

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